GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA

UNSTARRED QUESTION NO:4746
ANSWERED ON:23.04.2002
NHRC REPORT ON COMMUNAL VIOLENCE IN GUJARAT
ALE NARENDRA;C.K. JAFFER SHARIEF;NITISH SENGUPTA

Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether 20 pages of the report submitted by Government of Gujarat to the National Human Rights Commission on communal violence in the State were missing, as reported in the `Hindustan Times` dated march 28, 2002;

(b) if so, the facts thereof;

(c) whether NHRC has examined the report;

(d) if so, the findings thereof and the reaction of the Government thereto; and

(e) if not, the time by which it is likely to be examined by the Commission?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI. CH. VIDYASAGAR RAO)

(a) to (e): A statement is laid on the Table of the House.

STATEMENT REFERRED TO IN REPLY TO LOK SABHA UNSTARRED QUESTION NO. 4746 FOR 23RD APRIL REGARDING NHRC REPORT ON COMMUNAL VIOLENCE IN GUJARAT.

(a) & (b): Yes, Sir. On 27.03.2002 the Government of Gujarat sent its second report titled `Report on the incidents in Gujarat after the burning of the Sabarmati Express Train on 27th Feb.2002`, to the Commission, but soon thereafter an intimation was received by the Commission that the same was incomplete, on account of an inadvertent omission. The complete version of the State Government report was received by the Commission on 28.3.2002.

(c), (d) & (e): The National Human Rights Commission has examined the report of the Gujarat State Government that was received in the Commission on 28th March 2002. After examination, the Commission had issued its proceedings, which contains some preliminary comments and urgent recommendations for the consideration of the Central Government and the Government of Gujarat. The important observations of the Commission as well as its recommendations are enclosed at Annexure. A copy of the proceedings has been sent to the Govt. of Gujarat, which has since sent a detailed reply to the Commission. The reply of the Government of India on the recommendations, which pertain to it is being processed for necessary action.

ANNEXURE

ANNEXURE REFERRED TO IN REPLY TO PARTS (C) TO (E) OF THE STATEMENT IN REPLY TO LOK SABHA UNSTARRED QUESTION NO. 4746, FOR REPLY ON 23.4.2002.

Observations of the NHRC:

1. The Commission has observed that a serious failure of intelligence and action by the State Government marked the events leading to the Godhra tragedy and the subsequent deaths and destruction that occurred. On the face of it, in the light of the history of communal violence in Gujarat, recalled in the Report of the State Government itself, the question must arise whether the principle of `res ipsa loquitur` (`the affair speaking for itself`) should not apply in this case in assessing the degree of State responsibility in the failure to protect the life, liberty, equality and dignity of the people of Gujarat. The Commission accordingly requests the response of the Central and State Governments on this matter, it being the primary and inescapable responsibility of the State to protect such rights and to be responsible for the acts not only of its own agents, but also for the acts of non-State players within its jurisdiction and any inaction that may cause or facilitate the violation of human rights. Unless rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden is therefore now on the State Government to rebut this presumption. The Commission has noted that many instances are recorded in the Report of prompt and courageous action by District Collectors, Commissioners and Superintendents of Police and other officers to control the violence and to deal with its consequences through appropriate preventive measures and, thereafter, through rescue, relief and rehabilitation measures. The Commission cannot but note, however, that the Report itself reveals that while some communally-prone districts succeeded in controlling the violence, other districts - sometimes less prone to such violence succumbed to it. The Commission further observed that some districts withstood the dangers far more firmly than did others. Such a development clearly points to local factors and players overwhelming the district

officers in certain instances, but not in others, the further question arises as to what the factors were, and who the players were in the situations that went out of control. The Commission requests the comments of the State Government on these matters. The Commission has noted that while the Report states that the Godhra incident was `premeditated`, the Report does not clarify as to who precisely was responsible for this incident.

2. In the light of fact that numerous allegations have been made both in the media and to the team of the Commission to the effect that FIRs in various instances were being distorted or poorly recorded, and that senior political personalities were seeking to `influence` the working of police stations by their presence within them, the Commission observed that there is a widespread lack of faith in the integrity of the investigating process and the ability of those conducting investigations. The Commission has concluded that there is need for greater transparency and integrity to investigate the instances of death and destruction appropriately and to instill confidence in the public mind.

3. The Commission considers it would be naÃ¯ve for it to subscribe to the view that the situation was brought under control within the first 72 hours. Violence continues in Gujarat as of the time of writing these Proceedings.

4. The Commission has taken note of the Report of the Government of Gujarat attributing various comments to the Chief Minister and Commissioner of Police, Ahmedabad, among others, that were torn out of context by the media, or entirely without foundation. The Commission has observed that it firmly believes that it is essential to uphold the Right to Freedom of Speech and Expression articulated in Article 19(I)(a) of the Constitution, which finds comparable provision in Article 19 of the Universal Declaration of Human Rights, 1948 and Article 19 of the International Covenant on Civil and Political Rights, 1966.It is, therefore, clearly in favour of a courageous and investigative role for the media. At the same time, the Commission is of the view that the media should adopt, on a `self-policing` basis, to govern its conduct in volatile situations, including those of inter-communal violence, with a view to ensuring that passions are not inflamed and further violence perpetrated.

5. On the question of compensation, the Commission has noted from the Report of the State Government that Rs. 1 lakh will be paid in all instances, `thus establishing parity`.

6. The Commission has taken good note of the `Rescue, Relief and Rehabilitation Measures` undertaken by the State GovernmentIn many instances, strenuous efforts have been made by Collectors and other district Officers, often acting on their own initiative. Numerous complaints were received by the team of the Commission regarding the lack of facilities in the camps. The Commission has noted the range of activities and measures taken by the State Government to pursue the relief and rehabilitation of those who have suffered. It appreciates the positive steps that have been taken and commends those officials and NGOs that have worked to ameliorate the suffering of the victims. The Commission, however, considers it essential to monitor the on-going implementation of the decisions taken since a great deal still needs to be done. The Commission has already indicated to the Chief Minister that a follow-up mission will be made on behalf of the Commission at an appropriate time and it appreciates the response of the Chief Minister that such a visit will be welcome and that every effort will be made to restore complete normalcy expeditiously.

Recommendations made by NHRC

I Law & Order

(i) In view of the widespread allegations that FIRs have been poorly or wrongly recorded and that investigations are being `influenced` by extraneous considerations or players, the Commission is of the view that the integrity of the process has to be restored. It, therefore, recommends the entrusting the certain critical cases to the CBI. These include the cases relating to the

- Godhra incident, which is at present being investigated by the GRP;
- Chamanpura (Gulbarga Society) incident;
- Naroda Patiya incident;
- Best Bakery case in Vadodara; and the
- Sadarpura case in Mehsana district.

(ii) The Commission recommends that Special Courts should try these cases on a day-to-day basis, the Judges being handpicked by the Chief Justice of the High Court of Gujarat.Special Prosecutors should be appointed as needed. Procedures should be adopted for the conduct of the proceedings in such a manner that the traumatized condition of many of the victims, particularly women and children, is not aggravated and they are protected from further trauma or threat. A particular effort should be made to depute sensitive officers, particularly officers who are women, to assist in the handling of such cases.

(iii) Special Cells should be constituted under the concerned District Magistrates to follow the progress of the investigation of cases not entrusted to the CBI; these should be monitored by the Additional Director-General (Crime).

(iv) Specific time-frames should be fixed for the thorough and expeditious completion of investigations.

(v) Police desks should be set-up in the relief camps to receive complaints, record FIRs and forward them to Police Stations having jurisdiction.

(vi) Material collected by NGOs such as Citizen`s Initiative, PUCL and others should also be used.

(vii) Provocative statements made by persons to the electronic or print media should be examined and acted upon, and the burden of proof shifted to such persons to explain or contradict their statements.

(viii) Given the wide variation in the performance of public servants in the discharge of their statutory responsibilities, action should be initiated to identify and proceed against those who have failed to act appropriately to control the violence in its incipient stages, or to prevent its escalation thereafter. By the same token, officers who have performed their duties well, should be commended.

II. Camps

(i) Visits to camps by senior political leaders and officers should be organized in a systematic way in order to restore confidence among those who have been victimized. NGOs should be involved in the process and the management and running of the camps should be marked by transparency and accountability.

(ii) Senior officers of the rank of Secretary and above should be given specific responsibility in respect of groups of camps.

(iii) Special facilities/camps should be set-up for the processing of insurance and compensation claims. The Chief Minister of the State had requested the Commission to issue an appropriate request to insurance companies for the expeditious settlement of claims of those who had suffered in the riots. The Commission will readily do so and recommends that the State Government send to it the necessary details at an early date in order to facilitate such supportive action.

(iv) Inmates should not be asked to leave the camps until appropriate relief and rehabilitation measures are in place for them and they feel assured, on security grounds, that they can indeed leave the camps.

III. Rehabilitation

(i) The Commission recommends that places of worship that have been destroyed be repaired expeditiously. Assistance should be provided, as appropriate, inter alia by the State.

(ii) Adequate compensation should be provided to those who have suffered. This will require an augmentation of the funds allocated thus far, through cooperative arrangements involving both the State and Central Governments. Efforts should be made to involve HUDCO, HFDC and international financial and other agencies and programmes in this process.

(iii) The private sector, including the pharmaceutical industry, should also be requested to participate in the relief and rehabilitation process and proper coordinating arrangements established.

(iv) The role of NGOs should be encouraged and be an intrinsic part of the overall effort to restore normalcy, as was the case in the coordinated effort after the earthquake. The Gujarat Disaster Management Authority, which was also deeply engaged in the post-earthquake measures, should be requested to assist in the present circumstances as well.

(v) Special efforts will need to be made to identify and assist destitute women and orphans, and those subjected to rape. The Women and Child Development Department, Government of India and concerned international agencies/programmes should be requested to help. Particular care will need to be taken to mobilize psychiatric and counseling services to help the traumatized victims. Special efforts will need to be made to identify and depute competent personnel for this purpose.

(vi) The media should be requested to cooperate fully in this endeavour, including radio, which is often under-utilized in such circumstances.

IV. Police Reforms:

The Commission would like to draw attention to the deeper question of Police Reform, on which recommendations of the National Police Commission and of the National Human Rights Commission have been pending despite repeated efforts to have them acted upon. The Commission is of the view that recent events in Gujarat and, indeed, in other States of the country, underline the need to proceed without delay to implement the reforms that have already been recommended in order to preserve the integrity of the investigating process and to insulate it from extraneous influences.